

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.7000 Requirement of Withholding (IITA Section 701)

TITLE 86: REVENUE

**PART 100
INCOME TAX**

SUBPART Q: REQUIREMENT AND AMOUNT OF WITHHOLDING

Section 100.7000 Requirement of Withholding (IITA Section 701)

- a) General rules. Every employer maintaining an office or transacting business within this State and required under the provisions of 26 USC 3401 through 3404 to withhold and pay federal income tax on compensation paid in this State (see Section 100.7010 of this Part) to an individual is required to deduct and withhold from such compensation for each payroll period (as defined in 26 USC 3401), an amount computed in accordance with IITA Section 701 and 702. Illinois income tax is not required to be withheld on any compensation paid in this State of a character which is not subject to federal income tax withholding (whether or not such compensation is subject to withholding for federal taxes other than income tax, e.g., F.I.C.A. (Social Security taxes). (As to what constitutes "transacting business within this State", see Section 100.7020 of this Part).

- b) Example. This section may be illustrated by the following examples:
 - 1) Example 1: A is a typist in the offices of B corporation, where she has worked regularly for two months. A is, however, supplied to B corporation by C, a temporary help agency located in Illinois. C renders a weekly bill to B corporation for A's services, and C then pays A. B corporation is not A's "employer" within 26 USC 3401(d) and B corporation is therefore not required by the Internal Revenue Code to withhold a tax on A's compensation. Since B corporation is not required to withhold a tax for federal purposes on A's compensation, it is not required to do so for Illinois purposes. The temporary help agency, however, is required to withhold from A's compensation for federal purposes and must similarly do so for Illinois purposes.

 - 2) Example 2: A is employed as a cook by Mr. and Mrs. B. The B's are required to withhold FICA (i.e., Social Security) tax from compensation paid to A, but are not required to withhold from such compensation for income tax under the Internal Revenue Code because, under 26 USC 3401(a)(3), A's compensation does not constitute "wages". Since the B's are not required to withhold income tax for federal purposes, they are not required to do so for Illinois purposes.

 - 3) Example 3: A is a full time worker on B's wheat farm. A's duties include soil cultivation, raising and harvesting wheat, and maintenance of farm tools and equipment. B is not required to withhold from A's compensation for federal

income tax purposes since, under 26 USC 3401(a)(2), A's compensation does not constitute "wages". Therefore B is not required to withhold for Illinois tax purposes.

- 4) Example 4: A is a factory worker for B corporation. When A reaches retirement age, he begins receiving a pension from B corporation's qualified pension trust. Under 26 USC 3401(a)(12)(A), A's pension payments do not constitute "wages". Therefore, neither B nor the pension trust is required to withhold income tax for federal purposes and, accordingly, neither would withhold for Illinois tax purposes.
- 5) Example 5: A is a corporate executive. On January 1, 1965, A entered into an agreement with B corporation under which he was to be employed by B in an executive capacity for a period of 5 years. Under the contract, A is entitled to a stated annual salary and to additional compensation of \$10,000 for each year, the additional compensation to be credited to a bookkeeping reserve account and deferred, accumulated and paid in annual installments of \$5,000 on A's retirement beginning January 1, 1970. In the event of A's death prior to exhaustion of the account, the balance is to be paid to A's personal representative. A is not required to render any service to B after December 31, 1969. During 1970, A is paid \$5,000 while a resident of Illinois. The \$5,000 is not excluded from "wages" under 26 USC 3401(a); therefore, B is required to withhold federal income tax, and, since it is compensation "paid in this State" (see 100.7010(g) of this Part), B must withhold Illinois income tax on A's deferred compensation.

(Source: Amended at 24 Ill. Reg. 10593, effective July 7, 2000)